

5.4.1 State Purchasing Card: When possible, the spending unit is encouraged to use the State Purchasing Card. Use of the State Purchasing Card, however, is not justification to avoid utilizing statewide or agency contracts, but is simply a method of payment.

Agencies must use statewide contracts, unless specifically exempt by the Purchasing Director. For more information, refer to the State Auditor's Office Purchasing Card Program Procedures located at:

<https://www.wvsao.gov/PurchasingCard/StateGovernment/Forms.aspx>

5.5 Fixed Assets: After payment has been made to the vendor, reportable property must be added to the Fixed Assets module of wvOASIS.

5.6 Agency Delegated Public Records: All records maintained at the agency level related to purchase orders and/or contracts are considered public records. (Refer to **Section 1.7**). Agency delegated contracts and supporting documentation should be maintained until the agency obtains permission to destroy the documents from the Legislative Auditor's office pursuant to **West Virginia Code §5A-3-11(h)**.

5.7 Attorney General's Office Instructions for Use of WV-96: The Attorney General's Office has provided instructions for the use of the Agreement Addendum (WV-96) for agency delegated purchases. The instructions are included in **Appendix Q** of this handbook.

5.8 Changes: Occasionally, it becomes necessary to amend, clarify, change or cancel purchasing documents. A contract change order is required whenever the change affects the payment provision, time for completion of the work and/or the scope of the work. See **Section 6.7** for more on Changes to Contracts

5.9 Contract Cancellation: The agency may cancel a contract or purchase order obtained through the agency delegated process upon written notice to the vendor under any one of the following conditions including, but not limited to:

- (a) The vendor agrees to the cancellation;
- (b) The vendor has obtained the contract by fraud, collusion, conspiracy, or in conflict with any statutory or constitutional provision of the State of West Virginia;
- (c) Failure to conform to contract requirements or standard commercial practices;
- (d) The existence of an organizational conflict of interest is identified; or
- (e) Funds are not appropriated or an appropriation is discontinued by the legislature for the acquisition.
- (f) Violation of any federal, state, or local law, regulation or ordinance.

The agency may also cancel a purchase order or contract for any reason, upon 30 days' written notice to the vendor.

In the event that a vendor fails to honor any contractual term or condition, or violate any provision of federal, state, or local law, regulation, or ordinance, the agency may request the vendor remedy the contract breach or legal violation within a time frame the agency determines to be appropriate. If the vendor fails to remedy the contract breach or legal

violation then the agency may cancel immediately without providing the vendor an opportunity to perform a remedy.



WEST VIRGINIA PURCHASING DIVISION

PROCEDURES HANDBOOK

SECTION 6: FORMAL ACQUISITION PROCEDURES (Purchases Exceeding \$25,000)

6.0 FORMAL ACQUISITION PROCEDURES

6.1 Definition of Authority: All requisitions for commodities and services over \$25,000 must be submitted to the Purchasing Division using wvOASIS for formal competitive bidding.

The Purchasing Division will perform the following tasks:

- Review the bid specifications;
- Select prospective bidders (*in addition to those recommended by the agency*);
- Advertise in the **West Virginia Purchasing Bulletin**;
- Request and receive bids;
- Evaluate bids*; and
- Award the purchase to the lowest responsible bidder.

**It is important to note that the state agency may be involved in the evaluation process by submitting a recommendation for award to the Purchasing Division. However, for formal acquisitions, the Purchasing Division is the only entity that has the authority to issue or modify contracts.*

The vendor is responsible for submitting a correct and accurate bid to the Purchasing Division by the specified bid opening time and date. Signed fax bids are acceptable but receipt of bid must be completed prior to the bid opening time and date. Any bonds submitted via fax should be followed by an original bond received by the Purchasing Division within two (2) business days. A vendor choosing to submit a bid or a written change to a bid by electronic transmission accepts full responsibility for transmission and receipt of the bid or written change to a bid. The state accepts no responsibility for the unsuccessful or incomplete transmission of bids by electronic transmission. Bids submitted via facsimile may not be sealed until receipt by the Purchasing Division. The Purchasing Division makes no guarantee of confidentiality and accepts no responsibility for completeness of bids or transmission. E-mail bids are not acceptable and will be rejected.

6.2 The Bid Process: Formal bid procedures have been developed for procurements exceeding \$25,000 which are processed through the Purchasing Division. For procedures relating to technology purchases, visit **Section 3: Acquisition Planning, 3.6.1.4 Technology**. The steps in this process are detailed below:

6.2.1 Solicitation of Bids: The Purchasing Division utilizes various mechanisms to solicit competition from responsible vendors. Two most often used solicitation techniques are Requests for Quotations and Best Value Procurement.

6.2.2 Requests for Quotations: The Request for Quotation (RFQ) is used to acquire all tangible property (i.e., equipment, supplies, etc.).

An RFQ consists of the following:

- (1) a detailed description of, or specification for, the item(s) being purchased;
- (2) delivery date, if required;
- (3) bid price per unit of the item(s);
- (4) any applicable maintenance; and
- (5) quantities of all items.

Each item should be identified by a model number or some other specific identification. Prices cannot be altered after bids are opened.

6.2.3 Best Value Procurement: Best Value Procurement is a purchasing method used to acquire primarily services where the specifications or scope of work may not be well-defined or cost is not the sole factor in determining the award. Best Value Procurement methods include Requests for Proposals (RFP's) and Expressions of Interest (EOI)..

6.2.4 Requests for Proposals: Requests for Proposals (RFP's) are limited to procurements with an estimated value of \$250,000. All procurements under this dollar amount must use another purchasing method unless approved by the Purchasing Director.

The Purchasing Director or his/her designee must approve the use of all RFP's prior to release. To acquire this approval, prior to development of the RFP, please submit in writing the justification for utilizing this process and if this purchase order/contract will replace a current purchase order/contract. If it does replace an existing purchase order/contract, the agency should identify the current vendor and purchase order number. *Please note that the time required to process an RFP is longer than other purchasing methods and requires significant agency personnel time.*

Agencies are cautioned in writing specifications containing an excessive number of mandatory requirements. Mandatory requirements cannot be scored and cannot be waived. If an agency establishes mandatory requirements in the RFP, vendors must demonstrate they meet the mandatory requirements. Failure to meet the mandatory requirements must result in disqualification. Waiving a mandatory response requirement is strictly prohibited.

Standard Format (See Appendix J): All Requests for Proposals shall follow the standard format defined by the Purchasing Division. This format addresses required areas and enables the agency to modify the background and scope of work to meet its needs.

Evaluation Criteria: All evaluation criteria must be clearly defined in the specifications section and based on a 100 point total score. Based on a one hundred (100) point total, cost should represent a minimum of thirty (30) of the one hundred (100) total points in the criteria.

Proposal Format and Content: Proposals shall be requested and received in two (2) distinct parts: technical and cost. The cost portion shall be sealed in a separate envelope and will not be opened initially.

Proposal Submission: **West Virginia Code** §5A-3-11 states that "the bid must be received by the Purchasing Division prior to the specified date and time of the bid opening. The failure to deliver or the non-receipt of the bid by the Purchasing Division, prior to the appointed date and hour, shall result in the rejection of the bid." The Purchasing Division will not accept bids, modification of bids, or addendum acknowledgment forms by e-mail transmission. Acceptable delivery methods include hand-delivery, delivery by courier or facsimile.

Technical Bid Opening: The Purchasing Division will open only the technical proposals on the date and time specified in the Request for Proposal. The Purchasing Division representative will read aloud the names of those who responded to the solicitation and confirm that the original package contained a separately sealed cost proposal.

Technical Evaluation: An evaluation committee shall review the technical proposals, assign appropriate points and make a final written consensus recommendation to the Purchasing Division buyer within 10 days.

All proposals submitted first are evaluated to determine if they meet all mandatory requirements. Once it is established which proposals have met all mandatory requirements, the proposals are evaluated for the non-mandatory qualifications, experience, goals and objectives as outlined in the RFP. During this evaluation, all proposals begin with the maximum score. Deficiencies are noted through point deductions. No partial points are applied except for cost. All deductions issued for each proposal must include justification, with fairness and consistency.

Vendors must score a minimum of 70% (49 points in most cases) of the total technical points possible (*minimum acceptable score*) in order to be considered. Vendors not attaining the *minimum acceptable score* shall be disqualified and removed from further consideration. If the buyer approves the committee's recommendation, the information will be forwarded to an internal review committee within the Purchasing Division.

Cost Bid Opening: Upon approval of the technical evaluation from the internal review committee, the Purchasing Division shall schedule a time and date to publicly open and read aloud all cost proposals, including those proposals from vendors not meeting the *minimum acceptable score*. The agency and the vendors shall be notified of this date.

Cost Evaluation Approval and Award: The evaluation committee will review the cost proposals, assign appropriate points and make a final consensus recommendation to the Purchasing Division through the Purchasing Division buyer. Award is based upon the highest scoring vendor.

Once approved by the buyer, the contract is signed in the Purchasing Division, forwarded to the Attorney General's Office for approval as to form, encumbered and mailed to the appropriate parties.

Evaluation Committee: The Purchasing Division requires a committee of at least three (3) and recommends no more than five (5) persons knowledgeable of the service to be acquired. The agency must receive approval from the Purchasing Division to request more than five (5) members to this committee. The agency may invite individuals to serve as advisors who are subject matter experts, knowledgeable in the area of discussion. The advisors may assist the evaluation committee members (referred to as evaluators) in the evaluation process. The agency will identify and justify the evaluation committee members and advisors to the Purchasing Division prior to the release of the RFP.

To ensure that there is no conflict of interest, the evaluators and advisor(s) are required by the Purchasing Division to sign a **Certification of Non-Conflict of Interest**, in accordance with the **West Virginia Code** §5A-3-31 (see **Appendix B**). The Purchasing Division also requires that the agency procurement officer also sign this certification. By signing this certification, the evaluator(s), advisor(s) and agency procurement officer attest that: (1) his or her service on the evaluation committee is not in violation of **West Virginia Code** § 5A-3-31, § 6B-2-5, or any other relevant code section; (2) his or her service on the evaluation committee does not create a conflict of interest with any of the participating vendors; and (3) he or she has not had or will not have contact relating to the solicitation identified herein with any participating vendors between the time of the bid opening and the award recommendation without prior approval of the Purchasing Division. Agency procurement officers should discuss the non-conflict of interest issue with potential committee members to ensure that individuals who may have a conflict are not chosen to participate as evaluation committee members.

State agencies must submit the signed certification to the Purchasing Division prior to beginning the evaluation of an RFP or EOI.

The agency procurement officer or a member of the agency procurement staff, who is skilled in purchasing techniques and procedures, shall be present at evaluation committee meetings and serve on the evaluation committee as a full voting member unless the agency can provide written justification detailing the reason(s) why this requirement cannot be met. Such request must be approved by the Purchasing Division prior to performing any evaluation. *(The Purchasing Division reserves the right to accept or reject agency appointed committee members and to appoint committee members directly to provide proper representation. A non-state employee shall not serve as voting member of the evaluation committee.)* To ensure there is no conflict or influence on the committee members' decision process, the evaluation should take place with only the designated evaluators and advisors present.

If the participating vendors are required to conduct an oral presentation, the agency is permitted to invite other individuals, in addition to the evaluators and advisors, to attend these demonstrations.

The Purchasing Division buyer may observe the committee evaluation and answer procedural issues and provide general process oversight.

The Purchasing Division has created an internal Request for Proposal Evaluation Committee to review all agency evaluation committee recommendations prior to making the award.

Evaluation Training: All evaluation committee voting members must receive RFP evaluation training prior to commencing the evaluation. This training should be completed within one year prior to the evaluation. The Purchasing Division buyer may meet with the agency committee at the first evaluation meeting after the bid opening and provide committee training and general review of the proposals.

The purpose of this training is to ensure that the committee is knowledgeable of the proper evaluation procedure and the purchasing process. This training may be conducted by the Purchasing Division buying staff, by online training module available at the Purchasing Division's website or by agency procurement officers as determined by the Purchasing Division.

After the training, members will review all proposals independently and later meet to evaluate and assign points to each proposal. (See **Appendix J** for Standard RFP Evaluation Format). A Purchasing Division representative or agency procurement officer, at the discretion of the Purchasing Director, may be present to observe and ensure that proper procedures are followed in the final evaluation and assignment of scores.

Committee Recommendation: The committee will meet and deduct points based on the criteria and prepare a consensus recommendation signed by all members which is submitted to the Purchasing Division for approval. The members shall not average points and must reach a consensus decision. The Purchasing Director reserves the right to appoint a new member(s) or excuse existing members, if it is determined to be in the best interest of the state.

Since subjective *criteria* are used for the evaluation, it is not uncommon for vendors to *challenge* the award of an RFP. A challenge is likely to add delays to the process. If the committee's recommendation is acceptable to the Purchasing Division, the contract award will be processed. Any exception to these procedures must be approved by the Purchasing Director.

6.2.5 Expression of Interest: The Purchasing Division uses Expressions of Interest (EOI) in the selection of Architectural and Engineering Services.

For guidance on processing Expressions of Interest, refer to Section 7.1 and **Appendix P** for the EOI standard format.

6.2.6 Product Testing: Agencies may encounter situations in which it may be prudent to test products or services for the purpose of reducing costs or improving efficiencies. In these situations, agencies must contact the Purchasing Division for review and approval. This action will assure that appropriate laws, rules and regulations are

followed and that any potential reduction of competition or any potential sole source purchase be adequately reviewed, publicized and approved.

6.2.7 Selection of Vendors: The *West Virginia Purchasing Bulletin* consists of general descriptions of all requisitions expected to exceed \$5,000. Vendors may access the *West Virginia Purchasing Bulletin* through the Vendor Self Service portal at www.wvOASIS.gov. Vendors may also request bid packages by telephone, electronic mail, fax or via the Internet. Competition is always encouraged on all requisitions.

6.2.8 Pre-Bid Conferences: The Purchasing Division recommends agencies to consider conducting pre-bid conferences on major acquisitions early in the bid process to provide an opportunity to explain and clarify critical aspects of the solicitation, eliminate misunderstandings and encourage vendor participation. These conferences are conducted by the state agency with potential bidders when solicitations for complex, large dollar requirements are specified.

The Purchasing Division may participate in these pre-bid conferences. In all cases, it is very important for the agency procurement officer or designee who is trained and knowledgeable of the state procurement process to attend these conferences.

Vendor attendance at conferences may be optional or mandatory, as described in the bid document. If mandatory attendance is required, only bids or proposals from those vendors represented at the conference will be accepted. If participating vendors sign the official "sign-in sheet" while the meeting is in progress, then the vendors will be treated as if they were present for the entire conference and will be deemed to have the knowledge that they would have had if attending the entire conference. Teleconference attendance is prohibited unless specified in the bid document.

"Sign-in sheets" for mandatory pre-bid conferences should contain the following: name of company, person attending (signature and printed name), address, telephone number and facsimile number. The header information on the sheets should include the requisition number and the date and time of the pre-bid conference. The original sheet must be submitted to the Purchasing Division. No one (1) individual may represent more than one (1) vendor. (See **Appendix I**).

It is recommended that pre-bid conferences be scheduled on Tuesdays through Thursdays between 10 a.m. and 3 p.m. to encourage more participation.

A sample agenda for a pre-bid conference is as follows:

Conference Opening (Purchasing Representative)

- Offers opening remarks (Welcome attendees and introduce yourself)
- Identify the project by RFQ or RFP number and generic scope of work
- Provide the "sign-in sheet"

- Make available a few extra copies of the bid documents
- Remind all attendees to complete the "sign-in sheet" (Emphasize the importance of the "sign in sheet")
- Introduce the user agency representatives
- Review important general information items:
 - o Inquiries
 - o Vendor Registration
 - o Oral Statements
 - o Bid proposal submission process
 - o Schedule of events
 - o Bonding Requirements (Bid, performance, etc.)

Specification Discussion (Agency Representatives)

Agency personnel will open the technical specifications for discussion by item with all attendees. Items that all parties, including the agency and Purchasing Division representatives, agree need to be amended by addendum will be recorded by the agency to aid in preparing the addendum.

All clarifying statements and questions shall to be addressed on an addendum. Once the discussion of the technical specifications has concluded, the agency representative requests the Purchasing representative to discuss "General Terms and Conditions" of the solicitation.

Questions are received and discussed.

General Terms and Conditions Discussion (Purchasing Representatives)

Purchasing representatives will discuss the part "General Terms & Conditions" and then proceed to discuss the format, evaluation, and, in the use of RFPs, the cost proposals and Minimum Acceptable Score (MAS) concept.

Questions are received and discussed.

Conclusion (Both Agency and Purchasing Representatives)

Purchasing representatives will review items to be included in the addendum if at all possible. For items deferred, the information will be addressed in the addendum after management has had an opportunity to consider the issue.

Agency personnel should close with remarks and thank everyone for attending.

6.2.9 Addenda: During the bid process, it may be necessary to alter bidding documents. To facilitate a change to a solicitation after issuance for bid in the ***West Virginia Purchasing Bulletin***, a formal written addendum is required. The addendum

is generated by the agency to address the change and is issued to prospective bidders by the Purchasing Division.

A formal addendum is necessary to: add, delete or change specifications or attachments; provide a copy of the pre-bid attendee list; answer technical questions, requests for clarification, or requests for product substitutions (*on construction projects*); extend or alter bid schedule dates/times; or any other such change to the issued bidding documents.

The agency must submit a **Requisition** (including: description of change, amended budget amount/maximum budget amount-if applicable, and signature of authorized agency representative) to the Purchasing Division to issue the addendum.

The agency should also include the following where applicable:

- Specification changes, additions, or noted deletions
- Pre-bid attendee list
- An attachment listing each technical question with a corresponding answer
- Revised or added sketches, drawings and/or charts

Upon receipt, review and approval, the Purchasing Division will issue the addendum and distribute to all known bidders (those attending the pre-bid meeting, receiving bid packages, suggested vendors, etc.). Addenda are available in the **West Virginia Purchasing Bulletin** upon issuance. Additional bid time may be required to distribute addenda.

Addenda should be received by the Purchasing Division from the agency within seven (7) calendar days prior to the current scheduled bid opening date. For complex transactions, such as construction bids, Requests for Proposals, or complex Requests for Quotation, the Purchasing Division should receive from the agency the addenda within 14 calendar days prior to the current scheduled bid opening to allow bidders ample time to prepare and submit bid responses. The Purchasing Division may, at its discretion, extend the bid opening date if it deems to be in the best interest of the state of West Virginia.

6.2.10 Bid Submission: The vendor is responsible for submitting a correct and accurate bid to the Purchasing Division by the specified bid opening time and date. Fax bids are acceptable, but receipt of bid must be completed prior to the bid opening time and date. The Purchasing Division will not accept bids, modification of bids, or addendum acknowledgment forms by e-mail transmission. Acceptable delivery methods include hand-delivery, delivery by courier or facsimile.

Any bonds submitted via fax should be followed by an original bond received by the Purchasing Division within two (2) business days.

6.2.11 Establish Bid Opening: Formal bid opening dates are established by the Purchasing Division, based on the complexity of the purchase, and are open to the public. Vendors are not required to attend. Bid openings may be delayed due to the need for pre-bid conferences, issuance of addenda or other unforeseen factors.

At the bid opening, all bids are opened and read aloud. Bids shall not be considered if the vendor fails to submit the respective bid to the Purchasing Division by the specified date and time of the bid opening.

Bids that are not received by the date and time of the bid opening will be noted as "Bid Received Late," maintained with the official file and posted on this website upon receipt with the other bids.

After the bid opening, vendors may request copies of any proposal in accordance with the Purchasing Division's established fee for Freedom of Information (FOIA) requests. Convenience copies received by the Purchasing Division will be forwarded to the agency for evaluation.

6.2.12 Public Notice: Purchasing Division is required to make public notice of purchases expected to exceed \$25,000. This is usually accomplished by advertising in the *West Virginia Purchasing Bulletin*. The Purchasing Division requires sufficient time for our staff to perform various functions, including but not limited to, reviewing specifications and ensuring that all pre-approvals and other requirements have been met in advance of advertising the solicitation in the *West Virginia Purchasing Bulletin*. Agencies should allow at least five (5) working days prior to advertisement for this extensive review. Should the documentation received require additional information, the advertisement of the solicitation will not be released until all proper supporting documentation is obtained.

6.2.13 Securities/Bonds: Instruments are occasionally demanded from the successful vendor by the Purchasing Division prior to bid or award to ensure performance or to minimize financial risks to the State of West Virginia in the event of default.

6.2.14 Bonds: The Purchasing Director may require a bond or deposit as part of the bidding process. This requirement is most often used for construction contracts, however, it may be used for any commodity or service if determined to be in the best interest of the state.

The Director shall determine the applicability and amount of bonds or deposit required of a vendor at any time, if, in his or her opinion, the security is necessary to safeguard the state from undue risk. The bonds or deposit serve as a guarantee that if the contract is awarded to such bidder, that bidder will enter into a contract for the work specified in the bid.

Below are types of bonds used in the state purchasing process:

Bid Bond – A bond in which a third party agrees to be liable to pay a certain amount of money in the event a selected bidder fails to accept the contract as bid. This bond is usually required for five percent (5%) of the total bid amount. Faxed bids that contain bid bonds, or any other bond should be submitted with the bid and the vendor should provide the original bonds within two (2) working days of the bid opening dates.

Labor and Materials Payment Bond - A bond submitted by the apparent successful vendor upon request of the state to ensure payment of labor and materials purchased or contracted for on behalf of the state in a construction project.

Maintenance Bond - A bond provided as a warranty of normally two (2) years, which is required on roofing projects.

Performance Bond - A bond in which a surety agrees to be liable to pay a certain amount of money in the event a vendor fails to perform a contract as bid. This bond is usually for the full amount of the contract.

6.2.15 Liquidated Damages: A specified contract provision which entitles the state to demand a set monetary amount determined to be a fair and equitable repayment to the state for loss of service due to vendor's failure to meet specific completion or due dates.

6.2.16 Bonuses: Provisions in any requisition or contract that specifies a monetary reward for early completion of a project is prohibited and considered illegal.

6.2.17 Evaluation and Award: Once bids are received, they are examined by the Purchasing Division to ensure compliance with all specifications.

When the Request for Quotation process is used, competitive bids are received, properly evaluated and an award is made to the **lowest responsible bidder** meeting specifications, in accordance with the **West Virginia Code §5A-3-11**.

After a proper evaluation, if an award is made to other than the lowest responsible bidder, a thorough written justification signed by the evaluator(s) must be inserted into the file and retained for public record and inspection.

If using the Request for Proposal process, certain stipulations must be met and an evaluation committee is formed to review all proposals. (See **Section 6.2.4**).

Prior to an award, a vendor must be in compliance with the following requirements:

- Vendor registration process (must be registered and the fee paid, if applicable). The registration process includes having the proper disclosure of information in the wvOASIS vendor/customer account, such as the Owner/Officer Information and Banking Information listed under the "Disclosures" tab. It is also recommended that the Finance Division have a current W-9 on file for the vendor. This is indicated under the "Hold Payment" portion of the "Disbursement Options" tab of the wvOASIS vendor/customer account;
- In accordance with the **West Virginia Code §21A-2-6**, verification of current unemployment fee status and Workers' Compensation coverage is required to ensure the vendor is not in default with Workers' Compensation and Employment Compensation. wvOASIS automatically verifies compliance prior to award.
- Verification that the vendor is not debarred by the federal government. wvOASIS automatically verifies this federal compliance prior to award. Additionally, the

Purchasing Division maintains a list of vendors declared as debarred by the state of West Virginia, which may be accessed at: <http://www.state.wv.us/admin/purchase/Debar.html>. **Agencies must verify this compliance prior to award;**

- In accordance with the **West Virginia Code of State Rules** 148 CSR 6.1.e, the vendor must be licensed and in good standing with any and all state and local law and requirements, including proper registration and good standing with the Secretary of State's office and the State Tax Department, regardless of payment method. To search for a business or corporation with the Secretary of State's office, visit <http://apps.sos.wv.gov/business/corporations>.
- **Purchasing Affidavit** (required on all contracts exceeding \$5,000); and,
- **Agreement Addendum (WV-96)** (required when vendors submit alternate terms and condition with their bid) (See **Appendix B**)

The Purchasing Division may immediately award certain open-end contracts without the necessity of the agency's review when the Purchasing Division believes this action is in the best interest of the state of West Virginia. However, when an award has not been immediately made by the Purchasing Division, state agencies may be involved in the evaluation process by reviewing bids, making recommendations and providing justification. State agencies are encouraged to review the bids when posted online at the Purchasing Division's website. Paper copies will only be provided to the agencies if the bids are too large to post electronically.

If the state agency is involved in the evaluation process, a recommendation for award must be received in the Purchasing Division within five business days of the bid opening date, with the exception of Request for Proposals (RFP) and Expressions of Interest (EOI). RFP and/or EOI recommendations for award must be received within 10 business days. Failure to comply with these established deadlines may result in the agency requisition being cancelled, unless extenuating circumstances exist. It is the responsibility of the agency to provide justification for keeping a requisition open after these time frames.

6.2.17.1 Additive / Alternative Options (Add-on or Deduct): In construction contracts, there are projects for which alternative options may be requested of the participating bidders. Depending upon funding resources, these options may be included in the evaluation of the bids. When preparing the specifications, agency purchasers must put the alternatives in the order of importance to the agency, with the first alternative being the most essential to the project should additional funding be available. Additives / alternatives must be awarded in the order listed.

For guidance relating to the release of contract information, please refer to **Section 1.7**.

6.2.18 Tie Bids: Occasionally two (2) or more bids of equal terms and dollar amount are received in response to a solicitation, thus, resulting in a *tie bid*. If multiple awards are not made, then the tie bid(s) must be resolved. When tie bids are received, the

Purchasing Director shall break the tie by allowing the tied vendors to make a final offer, flip of a coin, draw of the cards, or any other impartial method considered prudent by the Director. The Purchasing Division must make the final decision in tie bid situations exceeding \$25,000.

6.2.19 Erroneous Bids: If an error is discovered by the vendor or the Purchasing Division, the burden of proof and timely action for request of relief is the vendor's responsibility. The request for relief must be made in writing by the vendor and received by the Director of Purchasing or his/her designee within five (5) working days from the bid opening date.

West Virginia Code of State Rules, 148 CSR 1-5.2.G, offers the Purchasing Director or his/her designee the authority to reject an erroneous bid after the bid opening according to the following criteria:

- (1) An error was made;
- (2) The error materially affected the bid;
- (3) Rejection of the bid would not cause a hardship on the state agency involved other than losing an opportunity to receive commodities and services at a reduced cost; and
- (4) Enforcement of the part of the bid in error would be unconscionable.

In order to reject a bid, the public file must contain documented evidence that all of the above conditions exist.

The vendor must specifically identify the error(s) and provide documentation to substantiate the claim that the error(s) materially affected the bid and enforcement of the part of the bid in error would be unconscionable.

6.2.20 Multiple Awards: The Director may elect to award a contract to more than one vendor when the Director determines such action would be in the best interest of the State of West Virginia.

In arriving at a determination, the Purchasing Director will consider the following factors, insofar as they are applicable:

- (1) The quality, availability and reliability of the supplies, materials, equipment or services and their adaptability to the particular use required;
- (2) The ability, capacity and skill of the bidder;
- (3) The sufficiency of the bidder's financial resources;
- (4) The bidder's ability to provide maintenance, repair parts and service;
- (5) The compatibility with existing equipment;

(6) The need for flexibility in evaluating new products on a large scale before becoming contractually committed for all use; and

(7) Any other relevant factors.

A written explanation will be included in the public file in situations where a multiple award is deemed necessary. The ability to approve and solicit multiple award contracts has not been delegated to agencies for procurements under \$25,000. Any need for such contracts must be processed as a formal procurement.

6.2.21 Negotiation When All Bids Exceed Available Funds: Spending units shall submit a valid maximum budgeted amount for each requisition or Request for Proposal to the Purchasing Division, which cannot be changed after the bid opening. The Purchasing Division will not disclose this information to the bidders at any time.

If all bids meeting requirements exceed this budgeted amount, the Purchasing Division may negotiate a lower price within budget with the lowest bidder. If the negotiation does not lead to the budget amount being met, the Director may negotiate a lower price with the next lowest bidder and continue negotiations with participating bidders after negotiation closes with the preceding bidder. **It is vital that all incoming requisitions state the maximum budgeted amount for the transaction.** This information is requested on the **Requisition**. See **Appendix B**.

If the agency does not provide its budgeted amount for the requisition prior to the bid opening, the Purchasing Division is unable to negotiate, in accordance with **West Virginia State Code**, §5A-3-11a. The ability to negotiate as described in this section has not been delegated to the agencies for procurements under \$25,000.

6.2.22 Discussion and Final Offers: As provided in the bid solicitation, the Director may conduct discussions to obtain best and final offers from bidders to assure full understanding of solicitation requirements. If the Director determines that a best and final offer is necessary from one vendor, all vendors shall be afforded the opportunity to provide best and final offers. All best and final offers shall be treated like a formal bid, except that advertising is not required. All bidders shall provide their best and final offers to the Purchasing Division prior to the date and time specified.

Government construction contracts and supplies and materials are exempt from this negotiation method.

The ability to conduct discussion and final offers has not been delegated to the agencies for procurements under \$25,000.

6.2.23 Reverse Auctions: This purchasing process may be utilized to procure commodities, upon approval by the Purchasing Director. The requesting agency must provide the Purchasing Division with an explanation of how the reverse auction process would be fair, economical and in the best interest of the state. Additionally, written documentation must be provided by the agency verifying that the commodities to be procured are subject to low price volatility; have specifications that are common and not complex; vary little between suppliers; are sourced primarily based on price, with limited

ancillary considerations; require little collaboration from suppliers; and are sold by a large, competitive supply base.

When soliciting bids for commodities, the Purchasing Division may be considered the spending unit and may rely on information provided by one or more agencies that will use the contract in satisfying the requirements necessary to utilize a reverse auction.

6.2.23.1 Prequalifications: All reverse auctions conducted must be preceded by a prequalification of vendors. Only vendors that have completed prequalification for the auction will be permitted to participate. Prequalification will be completed as follows:

- **Notice of Reverse Auction:** If the Director approves the agency's request to use the reverse auction, the agency will then prepare specifications to describe the commodity being procured by reverse auction and list any mandatory requirements the vendor must meet. The agency must provide that information to the Purchasing Director, along with any additional documentation deemed necessary. The Purchasing Division will ensure that an adequate description of the contemplated reverse auction is included and will advertise for the auction through the *West Virginia Purchasing Bulletin*.
- **Prequalification Bid:** Any vendor desiring to participate in the reverse auction must submit a prequalification bid to the Purchasing Division before the deadline contained in the advertisement of specifications. Failure to submit a prequalification bid prior to the deadline will result in automatic disqualification from participation in the reverse auction. The Purchasing Director may request additional information from a vendor to assist in evaluating a vendor's prequalification bid.
- **Prequalification Request Review:** Each prequalification bid submitted prior to the applicable submission deadline will be evaluated to ensure compliance with all specifications and mandatory requirements. All vendors that are in compliance with the specifications and mandatory requirements will be notified that they have been approved to participate in reverse auction. Vendors that are not in compliance with the specifications and mandatory requirements will be notified that their request to participate in the reverse auction has been denied. A vendor that has been approved will be provided with the necessary information to participate, which may include website addresses, log-in information, etc. A vendor that has been denied will be provided with notice and, upon request, be provided with a reason for the denial.

6.2.23.2 Reverse Auction Bidding: The prequalified vendors will be granted access to participate in the reverse auction either physically or electronically depending upon the format of the auction. Each prequalified vendor may submit bids until the time for bidding has expired. Any bid that a vendor

submits during the reverse auction process will supersede all prior bids submitted by that vendor.

6.2.23.3 Award: The lowest responsible bidder within the time period allowed for the reverse auction will be awarded a contract. If the Purchasing Director determines that a vendor identified as the lowest responsible bidder has failed to meet a mandatory requirement contained in the specifications or if the vendor fails to consummate the contract after bidding, the Purchasing Director may reject the bid of that vendor or cancel an award that has been made and move to award to the next lowest responsible bidder.

6.2.24 Master Contract and Direct Ordering Process: An agency that desires to establish a master contract with subsequent direct ordering process as defined in *West Virginia Code* §5A-3-10e(b)(4) must first provide written justification and obtain the written approval from the Purchasing Director.

Any request by a state agency to establish a master contract must include the following items:

- Identification and a detailed description of the commodity to be covered by the master contract;
- One or more requirements that each vendor must meet in order to be approved for the master contract, which may include, but are not limited to, experience, quality assurance, licensing, delivery terms and quantity terms;
- An estimation of the quantity and price of the commodity to be purchased over the terms of the contract; and,
- Forms, if any, that will be utilized in the direct ordering procedure bidding process.

6.2.24.1 Advertisement: Once the Purchasing Director approves a request to solicit master contracts, the documentation contained in the request, along with any additional documentation deemed necessary will be compiled. The vendor community will be notified of the opportunity to obtain a master contract through the *West Virginia Purchasing Bulletin*.

The justification must contain:

- A clause stating that the state is seeking a master contract that will permit all awarded vendors an opportunity to participate in the direct ordering process;
- An explanation of how bids will be submitted and evaluated through the direct ordering process;
- A clause limiting the master contract to a term of one year, and;
- Language setting dollar thresholds for direct ordering process purchases.

6.2.24.2 Evaluation and Award: At the date and time provided in the advertisement, the Purchasing Division will publicly open vendor responses at a bid opening. Vendors' responses will be evaluated and each vendor meeting all

qualifications will be awarded a master contract that allows the vendor to participate in the direct ordering process.

6.2.24.3 Direct Ordering Process: The limitations include that no single order under the master contract and direct ordering process is permitted to exceed \$1,000,000 for information technology commodity purchases or \$50,000 for other commodities unless a written request to exceed these limits is approved by the Purchasing Director in writing. If all bids returned under the direct ordering process are over the applicable order threshold, the agency must cancel the direct order process and solicit bids through the normal competitive bidding process. If the agency solicits bids and one or more vendors submit bids over the dollar threshold, the agency may only award to the vendors that submit bids under the threshold. The Purchasing Director may set lower limits for the direct order process if determined to be appropriate.

Requests for Bids: An agency, or the Purchasing Division when acting as a spending unit, that desires, to purchase a commodity identified in the master contract must notify each vendor that has been awarded a master contract of the request. The notice must contain any commodity specific requirements, the total quantity of the commodity being sought, the deadline by which the vendors must submit bids, and the location to which bids must be submitted.

Direct Order Bid Opening: At the established date, time and place, the agency or the Purchasing Division will open all bids in a public bid opening and announce the vendors' bid prices for all bids.

Evaluation and Award: After bids have been opened, the agency, or the Purchasing Division when acting as a spending unit, shall evaluate the bids received to ensure that the bid submissions comply with the requirements contained in the master contract and the rests for bids. The agency, or the Purchasing Division when acting as a spending unit, shall award the direct order to the lowest responsible bidder that has complied with all requirements. The agency must reject any bid that fails to comply with the requirements contained in the master contract and the requests for bids. The agency shall provide the following notices related to the evaluation and award:

- The lowest responsible bidder must be notified that it has won the direct order process and may begin the process of filling the order;
- The vendors that do not submit the lowest bid must be notified that their bids were not the lowest and they will not be selected to provide the commodity; and,
- Any vendor that submits a bid that is rejected must be notified of the rejection and upon request, the vendor must be provided with a reason for that rejection.

Any agency utilizing the direct ordering process must maintain records of all requests for bids, bids received, bids awarded, bids rejected and other correspondence related to the direct ordering process. The Purchasing Division

may institute oversight procedures that require agencies to provide notices to the Purchasing Division and obtain approvals from the Purchasing Division prior to using the direct order process. The Purchasing Division may also choose to conduct the direct order process on the agency's behalf, if determined additional oversight is warranted.

6.3 Vendor Preference: *West Virginia Code* §5A-3-37 provides an opportunity for a qualifying vendor to request at the time it submits its bid, preference for its residency status. This preference does not apply to construction. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the *West Virginia Code* and as specified herein. A certificate of application is used to request this preference. Generally, a West Virginia vendor may be eligible for two 2.5% preferences in the evaluation process. The Purchasing Division will make the determinations as to whether the Vendor Preference is applicable. Please note that when applying vendor preference with the Request for Proposal process, the preference is applied only to the bid price prior to calculating total cost points.

There are different scenarios of eligibility using the Vendor Preference. It is therefore strongly recommended that the Purchasing Division buyer assist the agency in evaluating specific situations relating to this preference.

The Vendor Preference should be applied using the following five step process shown below. The process is also illustrated by three specific examples included in **Appendix S**.

- Step 1:** Calculate the effect of each Vendor Preference (2.5% and 5%) on out-of-state bids by multiplying the out-of-state bids by 1.025 or 1.05 as appropriate.
- Step 2:** Compare resident vendors' bids to out-of-state vendors' preference adjusted bids. (A vendor that receives a 2.5% preference will have its bid compared to the out-of-state vendors' bids adjusted for the 2.5% preference by multiplying the out-of-state vendors' bids by 1.025. Similarly, the vendor that receives a 5% preference will have its bid compared to out-of-state vendors' bids adjusted for the 5% preference.)
- Step 3:** If an out-of-state vendor's bid is lower than all in-state vendors' bids after preference adjustments and comparisons to the in-state vendors' bids, then the out-of-state vendor should be declared the winning vendor. If the out-of-state bid adjusted for preference is higher than an in-state bid then move to Step 4. (If multiple out-of-state vendors are lower than all in-state vendors after preference adjustments and comparisons then award to the lowest out-of-state vendor).
- Step 4:** Compare In-State Vendor bids without regard to preference (Only necessary if not awarded to out-of state vendor in step 3 above).
- Step 5:** Award to lowest In-State Vendor identified in Step 4 above. (Only if not awarded to out-of state vendor in step 3 above).

6.3.1 Preference for West Virginia Veterans: *West Virginia Code* §5A-3-37(a)(5) & (6) provides an opportunity for qualifying resident vendors who are a veteran of the United

States armed forces, the reserves or the National Guard to request, at the time of bid, preference for their residency status. Resident veterans who qualify may receive a preference of 3.5%.

6.3.2 Preference for Non-Resident Small, Woman, and Minority-Owned Businesses: *West Virginia Code* §5A-3-37(a)(7) provides that a non-resident vendor certified as a small, women-owned, or minority-owned ("SWAM") business, pursuant to *West Virginia Code* §5A-3-59, shall be provided the same preference made available to any resident vendor. This certification may assist resident small, women and minority-owned businesses when soliciting business in other states.

The SWAM rules found in *West Virginia Code of State Rules* §148-22-9 further explain that a non-resident SWAM business will receive the highest preference made available to a resident vendor in the solicitation for which the SWAM business has submitted a bid.

In order to obtain this preference, however, a non-resident SWAM business must identify itself as such in writing on the Vendor Preference Certificate available from the Purchasing Division and submit with its bid. Additionally, the vendor must have indicated on the *Vendor Registration and Disclosure Statement and Small, Women, and Minority-owned Business Certification Application* (WV-1 or WV-1A) that they qualify for this certification under question 4(A). The vendor must be properly certified under the rules governing certification pursuant in *West Virginia Code of State Rules* §148-22-1 et seq.

In the event that no preference is made available to a resident vendor in a particular solicitation, the non-resident SWAM business will not receive a preference. Additionally, any preference granted to a non-resident SWAM business shall not be applied between or among West Virginia resident vendors and non-resident SWAM businesses.

Agencies are required to maintain a list on the prescribed form from the Purchasing Division listing all SWAM vendors for which they have contracted during the fiscal year and submit such list to the Purchasing Division.

The SWAM rules also require State agencies to report, in a manner prescribed by the Purchasing Director, procurement transactions in the preceding fiscal year with SWAM businesses.

6.4. Contract Commencement: With the exception of certain approved emergency contracts, the encumbrance date is the earliest date that a vendor may commence work on any contract. No authority may be given to the vendor by the agency or any other entity to commence work unless an encumbered contract has been processed by the Purchasing Division and received by the vendor.

In regard to construction projects, when an architectural or engineering (A/E) firm is employed, construction does not commence until such time as the agency gives the contractor a Notice to Proceed. Copies of all Notices to Proceed shall be provided to the Purchasing Division at the same time as the contractors receive their notification.

A change order must be issued to cover all contract changes. For more information on change orders, see Section 6.7.

6.5. Contract Management: Contract management provides for assurance that the state receives service or commodities meeting requirements before payment is made. Construction contracts are excluded by law.

6.5.1 Except for government construction contracts, the Purchasing Director shall prescribe contract management procedures for contracts for commodities and services in the amount of \$1 million or less. These procedures may include, but are not limited to:

- (a) establishing payment benchmarks to assure the state receives value prior to remitting payment;
- (b) conducting regular meetings between spending unit and vendor to assess contract performance;
- (c) training spending unit personnel to manage contracts; or
- (d) using the Office of Technology Project Manager for its projects.

6.5.2 For contracts for commodities and services in an amount exceeding \$1 million, the following contract management procedures apply:

6.5.2.1. Post Award Conferences

The agency administrator responsible for administering the contract shall hold a post award conference with the contractor to ensure a clear and mutual understanding of all contract terms and conditions and the respective responsibilities of all parties. The agenda for the conference shall include, at a minimum, the introduction of all participants and identification of agency and contractor key personnel and discussion of the following items:

- (1) The scope of the contract, including specifications of what the agency is buying;
- (2) The contract terms and conditions, particularly any special contract provisions;
- (3) The technical and reporting requirements of the contract;
- (4) The contract administration procedures, including contract monitoring and progress measurement;
- (5) The rights and obligations of both parties and the contractor performance evaluation procedures;
- (6) An explanation that the contractor will be evaluated on its performance both during and at the conclusion of the contract and that such information may be considered in the selection of future contracts;

- (7) Potential contract problem areas and possible solutions;
- (8) Invoicing requirements and payment procedures, with particular attention to whether payment will be made according to milestones achieved by the contractor; and
- (9) An explanation of the limits of authority of the personnel of both the agency and the contractor.

6.5.2.2 Monitoring

The agency shall develop a comprehensive and objective monitoring checklist which:

- (1) Measures outcomes;
- (2) Monitors compliance with contract requirements; and
- (3) Assesses contractor performance.

6.5.2.3 Reports

The agency shall make the following reports to the Director, on a schedule established by the Director, but not less frequently than once a year:

Status Reports

Status reports describe the progress of the work; track the organizational structure of the statement of work in terms of phases, segments, deliverables and products; and describe what work is complete and what work is pending and contrast that status against the contract schedule. If there are any unresolved issues that the agency is contractually obligated to resolve, those issues should be included in the status report and a resolution should be requested.

Activity Reports

Activity reports describe all activity on the project, regardless of whether substantial progress has been made toward completion of the project. If payment is based on the number of completed transactions, these activities must be specifically set out in the report.

6.5.3 Inspection: In accordance with the *West Virginia Code* §5A-3-9, the Purchasing Director reserves the right to inspect whether commodities delivered or services provided conform to contractual requirements. Nonconformity is to be reported to the Purchasing Director and the chief officer of the spending unit purchasing such commodities for remedial action.

6.6 Encumbrances: The Purchasing Division's Communication and Technical Services Section encumbers all purchase orders executed by the Purchasing Division over \$25,000. Encumbrance is the process which ensures that funding is available for the payments relating to the specific purchase order or contract.

Requisitions submitted to the Purchasing Division are to include proper encumbrance information for purchase orders to be encumbered by the Purchasing Division's Communication and Technical Services Unit. Agencies must designate the appropriate account(s) from which funds to pay for a contract will be taken prior to a contract being awarded, unless the contemplated contract is a type that cannot be encumbered. Open-end contracts do not need to be encumbered.

Prior to issuing a contract, the Purchasing Division will verify the amount of funds encumbered is appropriate and that the account being encumbered matches what the agency has requested. Contract must be encumbered prior to issuance in the following amounts:

- One-time Purchases in Current Fiscal Year: A contract for one-time purchase to be completed in the current fiscal year must encumber the full contract amount.
- Contract Spanning Multiple Years: A contract that will span multiple fiscal years must be encumbered at least the amount of funds that will be spent under the contract in the current fiscal year;
- Contract to Begin in a Future Year: A contract that will be awarded prior to the end of a current fiscal year but will become effective after that same fiscal year has ended is not required to encumber funds prior to issuance of the contract.
- Open-end and Statewide Contracts: An open-end or statewide contract issued by the Purchasing Division is not required to have funds encumbered prior to the issuance of the contract.

6.7 Changes, Reinstatements and Cancellations:

6.7.1 Changes: Occasionally, it becomes necessary to amend, clarify, change or cancel purchasing documents.

A contract change order is required whenever the change affects the payment provision, time for completion of the work and/or the scope of the work.

West Virginia Code of State Rules 148-1-6.8 provides the Purchasing Director with the authority and responsibility to review change orders as he or she reviews and approves the original contract. A spending unit wishing to change a contract must submit a request for the contract change to the Purchasing Division. Any change order request submitted to the Purchasing Division that requires vendor agreement must include the vendor's agreement in writing. Additional documentation may be requested by the Purchasing Director to aid in the review. If the Purchasing Director determines the request is not properly justified, the change order may be rejected.

Changes to the original purchase order must be sequentially numbered in the appropriate space. To effect the change, written concurrence from the vendor is required. The explanation of change to an existing contract must be described with sufficient detail and clarity that any individual could review and generally understand the contract and change.

Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change. This requirement is codified in the **West Virginia Code of State Rules** § 148-1-6.8.f. as follows:

Spending units must not permit vendors to perform work that the spending unit anticipates will be added to a contract through a change order until such time as the change order has been formally approved by the Purchasing Division and the Attorney General's office, encumbered by the Purchasing Division, and mailed to the vendor. This subsection related to timing of work does not apply to government construction contracts executed pursuant to W.Va. Code §5-22-1, et seq.

Administrative changes to contracts should be made in advance and approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change. However, administrative changes may be made prior to being approved by the Purchasing Division and the Attorney General's office. These administrative changes may include:

1. Changing a vendor name
2. Changing funding sources or accounting lines
3. Changing a vendor's address
4. Correction of a clerical mistake made by the State
5. Adding a renewal/extension year that was originally contemplated in the contract, provided that no new commodities/services or increases in price are included.
6. Contract closeout where quantity required was originally unknown or estimated, unit prices were included in the original contract, unit prices are not modified as part of the change order, and the quantity required was less than originally anticipated.
7. Inclusion of the Notice to Proceed documentation.
8. Changes to a contract utilized to facilitate the mandatory procurement of commodities and services from non-profit workshops, pursuant to **West Virginia Code** §5A-3-10(e).
9. Any other administrative change not included may be approved by the Purchasing Director on a case-by-case basis.

Any change request of a purchase order in excess of ten percent (10%) of the original contract amount (aggregate) is strongly discouraged. The Purchasing Director, at his discretion, may grant a change in any amount if unforeseen circumstances have occurred and such change is in the best interest of the State of West Virginia.

6.7.2. Contract Cancellation: The Purchasing Director reserves the right to cancel any contract or purchase order upon written notice to the vendor under any one of the following conditions including, but not limited to:

- (a) The vendor agrees to the cancellation;

- (b) The vendor has obtained the contract by fraud, collusion, conspiracy, or in conflict with any statutory or constitutional provision of the State of West Virginia;
- (c) Failure to conform to contract requirements or standard commercial practices;
- (d) The existence of an organizational conflict of interest is identified; or
- (e) Funds are not appropriated or an appropriation is discontinued by the legislature for the acquisition.
- (f) Violation of any federal, state, or local law, regulation or ordinance.

Notwithstanding other provisions of this subsection, the Director may cancel a purchase order or contract for any reason or for no reason, upon 30 days' notice to the vendor.

In the event that a vendor fails to honor any contractual term or condition, or violate any provision of federal, state, or local law, regulation, or ordinance, the Purchasing Director may request the vendor remedy the contract breach or legal violation within a time frame the Director determined to be appropriate. If the vendor fails to remedy the contract breach or legal violation or the Director determines, at his or her sole discretion, that such a request is unlikely to yield a satisfactory result, then he or she may cancel immediately without providing the vendor an opportunity to perform a remedy.

6.8 Protest Procedures: The Purchasing Division's *West Virginia Code of State Rules (148 CSR 1)* provide participating vendors with the right to protest specifications and purchase order awards.

6.8.1 Submission of Protest: Protests based on bid specifications must be submitted no later than five (5) working days prior to bid opening. Protest of purchase order or contract awards must be submitted no later than five (5) working days after the award. The vendor is responsible for knowing the bid opening and award dates. Protests received after these dates may be rejected at the option of the Purchasing Director.

All protests shall be submitted in writing to the Purchasing Division and contain the following information:

- (a.) the name and address of the protestor;
- (b.) the requisition, purchase order or contract numbers;
- (c.) a statement of the grounds of protest;
- (d.) supporting documentation (if necessary); and
- (e.) the resolution or relief sought.

Failure to submit this information shall be grounds for rejection of the protest by the Director of the Purchasing Division.

6.8.2 Protest Review: The Purchasing Director or his/her designee shall review the matter of protest and issue a written decision. A hearing may be conducted at the option of the Purchasing Director or assigned designee.

Continuation or delay of the purchase order or contract award while the protest is considered is at the discretion of the Purchasing Director.

The Purchasing Division may refuse to review any protests when the matter involved is the subject of litigation before a court of competent jurisdiction; if the merits have previously been decided by a court of competent jurisdiction; or if it has been decided in a previous protest by the Purchasing Division.

All protests, regardless of dollar amount should be directed to the Purchasing Division and any protests incorrectly submitted to the spending unit must be forwarded by the spending unit to the Purchasing Division for further review. A protest incorrectly delivered to the spending unit will not be considered received until it reaches the Purchasing Division. Responsibility for delivery of the protest to the Purchasing Division shall remain with the protesting vendor. A spending unit's failure to deliver the protest to the Purchasing Division shall not be grounds for extending the time for receipt of protests.

6.8.3 Reverse Auction Protests: A vendor desiring to submit a protest of specifications related to a reverse auction must submit the protest five (5) working days prior to the prequalification bid submission deadline. A protest of a prequalification decision must be submitted within five (5) working days of the prequalification approval or denial. A protest of award must be submitted within five (5) working days of award.

6.8.4 Master Contract and Direct Order Protests: Any vendor desiring to protest the specifications of a master contract or the direct ordering process may do so prior to five (5) working days before the master contract opening date and five (5) working days before the direct ordering process opening date. Any vendor desiring to protest the award of a master contract or direct order may do so within five (5) working days of the master contract award and within five (5) working days of the direct order award.



PROCEDURES HANDBOOK

SECTION 7: SPECIAL ACQUISITIONS

7.0 SPECIAL ACQUISITIONS:

The procurement of certain commodities and services has limitations or require special procedures.

7.1 Architectural and Engineering

7.1.1 Projects Exceeding \$250,000: In the procurement of architectural and engineering services, including those professional services of an architectural or engineering nature, for projects estimated to exceed \$250,000 (construction cost and architectural fees), an Expression of Interest shall be requested of interested firms by the Purchasing Division. Special procedures in the selection of architectural and engineering services are required in accordance with Chapter 5G of the ***West Virginia Code***. Agencies must use the standard EOI format for projects expected to exceed \$250,000.

The expression of interest shall include a statement of qualifications and performance data and may include anticipated concepts and proposed methods of approach to the project. The project must be announced by public notice.

An evaluation committee shall consist of three (3) to five (5) representatives of the agency.

The agency may invite individuals to serve as advisors who are subject matter experts, knowledgeable in the area of discussion. The advisors may assist the evaluation committee members (referred to as evaluators) in the evaluation process. The agency will identify and justify the evaluation committee members and advisors to the Purchasing Division prior to the release of the EOI.

The agency procurement officer or a member of the agency procurement staff, who is skilled in purchasing techniques and procedures, shall be present at evaluation committee meetings and serve on the evaluation committee as a full voting member unless the agency can provide written justification detailing the reason(s) why this requirement cannot be met. Such request must be approved by the Purchasing Division. (The Purchasing Division reserves the right to accept or reject agency appointed committee members and/or to appoint committee members directly to provide proper representation. A non-state employee shall not serve as voting member of the evaluation committee.) To ensure there is no conflict or influence on the committee members' decision process, the evaluation should take place with only the designated evaluators and advisors present.

The committee shall:

- (a) Evaluate the statements of qualifications and performance data and other material submitted;
- (b) Develop a "short list" (minimum of three [3] firms) which, in their opinion, are best qualified to perform the desired service; and
- (c) Interview each firm on the "short list" and discuss anticipated concepts and proposed methods of approach to the assignment, including clarification of qualifications and performance data, the scope of services offered and needed time to complete project.

The committee will rank no less than three (3) firms deemed to be the most highly qualified on the basis of the matters discussed during the interview, in order of preference, and present such list to the state agency and the Purchasing Division. The committee will forward its recommendation to the Purchasing Division along with a written justification as to the selection of the firm. The justification must provide a score sheet with complete explanation of all points deducted to clearly indicate how the firms were ranked. The committee will then commence negotiations as to scope of service and price with the highest qualified firm.

If the agency fails to negotiate a satisfactory contract with the highest qualified firm at a fee determined to be fair and reasonable, negotiations as to scope of services and price with the firm of second choice will commence. Failing that, negotiations as to scope of service and price will be undertaken with the third most qualified firm. In no situation, after negotiations have been terminated with a firm, will negotiations be reopened.

If the agency fails to negotiate a satisfactory contract with any of the selected firms, in order of their competence and qualifications, they will rebid.

7.1.2 Projects \$250,000 or Less: In the procurement of architectural and engineering services for projects estimated to cost less than \$250,000 (which includes construction cost and architectural fee), competition shall be sought by the agency.

The agency shall conduct discussions with three (3) or more firms solicited on the basis of known or submitted qualifications for the assignment and the scope of services prior to the awarding of any contract. The Purchasing Master Terms and Conditions must be included with the negotiated contract that is submitted to the Purchasing Division, so that all vendors are aware of the requirements of the potential contract.

Price may not be discussed prior to selecting the highest rated firm.

The agency and the initially selected firm shall further develop the scope of services and, at this time, discuss price. If negotiations fail to result in a satisfactory contract, the agency may commence negotiations with the next ranked firm in the same manner, continuing until a satisfactory contract is negotiated.

Once negotiations conclude with the selected vendor, the agency must send the negotiated contract to the Purchasing Division to be properly executed.

If a judgment is made that special circumstances exist and that seeking competition is not practical, the agency may, with the prior approval of the Purchasing Director, select a firm on the basis of previous satisfactory performance and knowledge of the facilities and agency's needs.

Change order for projects estimated to cost less than \$250,000 (which includes construction and architectural fee) that exceeds \$250,000 may not be approved and may necessitate a rebid.

West Virginia Code § 5G-1-1, et seq. does not provide for a separate process for the procurement of architectural or engineering services estimated to cost \$25,000 or less. An EOI anticipated costing \$25,000 less would be processed in accordance with the laws, rules, and procedures applicable to EOI's under \$250,000.

7.1.3 Non-Conflict Requirement for Expressions of Interest: To ensure that there is no conflict of interest in evaluating Expressions of Interest (EOIs), To ensure that there is no conflict of interest, the evaluators and advisor(s) are required by the Purchasing Division to sign a **Certification of Non-Conflict of Interest**, in accordance with the **West Virginia Code** §5A-3-31 (see **Appendix B**).

The Purchasing Division also requires that the agency procurement officer sign this certification. By signing this certification, the evaluator(s), advisor(s) and agency procurement officer attest that: (1) his or her service on the evaluation committee is not in violation of **West Virginia Code** §5A-3-31, §6B-2-5, or any other relevant code section; (2) his or her service on the evaluation committee does not create a conflict of interest with any of the participating vendors; and (3) he or she has not had or will not have contact relating to the solicitation identified herein with any participating vendors between the time of the bid opening and the award recommendation without prior approval of the Purchasing Division.

Agency procurement officers should discuss the non-conflict of interest issue with potential committee members to ensure that individuals who may have a conflict are not chosen to participate as evaluation committee members. State agencies must submit the signed certification to the Purchasing Division prior to beginning the evaluation of an RFP or EOI.

7.2 Capitol Improvements

7.2.1 State Capitol Complex: Pursuant to the **West Virginia Code** §4-8-5, "No contract or contracts which will result in physical changes to the state Capitol or any approaches, structures or facilities incidental thereto shall be let, nor shall any physical changes be made not requiring a contract, until approval of the commission has been obtained."

The Code requires the Capitol Building Commission to review and either approve or reject all plans recommending substantial physical changes inside or outside the state

Capitol or surrounding complex, including the public meeting rooms, hallways and grounds which affect the appearance thereof. The surrounding complex shall include the governor's mansion and other buildings used by the governor as part of his residence; the state science and cultural center; all state office buildings located in the immediate vicinity of the state Capitol and the roadways, structures and facilities which are incidental to such buildings. Substantial physical change means any permanent physical changes that alter the appearance of the public areas of the Capitol and surrounding complex.

The approval of the Capitol Building Commission is mandatory before any contract may be bid for work requiring a substantial physical change, or before changes are initiated if the work is not done under a contract.

7.2.2 State-Owned Office Buildings: Pursuant to the *West Virginia Code* §4-8-4, "The Capitol Building Commission shall review and approve or reject all plans recommending substantial physical changes inside or outside the state capitol building or surrounding complex, including the public meeting rooms, hallways and grounds, which affect the appearance thereof. The approval of the commission is mandatory before a contract may be let for work which constitutes a substantial physical change, or before changes are started if the work is not done under a contract. As used in this article, the surrounding complex shall include the governor's mansion and other buildings used by the governor as part of his residence, the state science and cultural center, all state office buildings located in the immediate vicinity of the state capitol, and the roadways, structures and facilities which are incidental to such buildings.

As used in this article, substantial physical change shall include, but not be limited to, permanent physical changes that alter the appearance of the public areas of the capitol building and surrounding complex. The secretary of the department of administration shall promulgate rules and regulations, pursuant to the provisions of chapter twenty-nine-a of this code, which rules and regulations shall be subject to the approval of the capitol building commission, to implement the provisions of this article." In addition, *West Virginia Code* §4-8-4 states that no contract or contracts which will result in physical changes to the capitol building or any approaches, structures or facilities incidental thereto shall be let, nor shall any physical changes be made not requiring a contract, until approval of the commission has been obtained.

7.3 Data Processing Equipment or Software

West Virginia Code §5A-6-1, et seq., provides that the Chief Technology Officer (CTO) -may evaluate and make recommendations on the design and suitability of Information Technology (IT) equipment and related services, and may review and make recommendations on the purchase, lease or acquisition of information equipment and contracts for related services, including temporary IT staffing by all state spending units.

All infrastructure technology equipment procurement requests, regardless of dollar value, that will connect to the state network requires CTO approval prior to submission of a request to the Purchasing Division, as the CTO may require changes by the agency. All state entities, with the exception of Constitutional Officers, Higher Education and K-12, shall request approval for, at a minimum, but not limited to, the purchase of servers, storage devices, computers, tablets,